# Libby Community Advisory Group Meeting Summary April 10, 2008

#### **Introductions**

The members of the Libby Community Advisory Group (CAG) and its facilitator, Gerald Mueller, introduced themselves.

#### Agenda

The CAG agreed to the following agenda for this meeting:

- March 13, 2008 Meeting Summary Correction;
- Old Business
- Discussion with Joan Miles;
- Settlement Agreement Comment Letter;
- Agency Reports; and
- Public Comment.

## March 13, 2008 Meeting Summary Correction

Gerald Mueller corrected the March 13, 2008 meeting summary. The summary incorrectly stated that DPHHS had said that the funds appropriated by the 2007 special session of the legislature could not be expended until July 1, 2008. The correct date is July 1, 2007.

Audience Member Comment - I believe that Ted Linnert stated at the March 13, 2008 meeting that the interest rate on the settlement fund account would be 15-20%. The meeting summary does not state this.

Response by Ted Linnert - I did not specify an interest rate.

CAG Member Comment - Mr. Linnert said that because of the interest rate, the fund would contain more money that would ever be needed for the cleanup and operation and maintenance.

Comment by Paul Peronard - I was not at the March 13, 2008 CAG meeting, so I do not know what was said. However, the typical interest rate on accounts holding federal funds is in the 3-5% range. Last year, the interest rate was 4.2%.

#### **Old Business**

DC Orr stated that at the last February 14, 2008 CAG meeting, he discussed with Paul Peronard the city's request for replacement of five buildings and a water line at the export plant site, but settled for four buildings. He submitted a copy of a letter which documents this request, and asked that it be included in the summary of this meeting. The letter is included below in Appendix 2.

#### **Discussion with Joan Miles**

Joan Miles, DPHHS Director, stated that she was pleased to spend the day in Libby meeting people and learning about the programs ongoing here. She introduced the State Medical Officer, Dr. Steven Helgerson, who provided a summary of the results of the Montana Asbestos Screening and

Surveillance Activity (MASSA). Since 2000, first the Agency for Toxic Substances Disease Registry and then, since 2003, MASSA offered free lung screening to residents and former residents of Libby who may have been exposed to asbestos from a local vermiculite mine. To be screened, a person had to have lived, worked, played, or attended school in the Libby area for at least six months prior to December 31, 1990. During 2000 to 2007, 7,328 people received one or more chest radiographs as a part of the screening. Of the 6,668 people screened during 2000-2001, 2,240 came back at a later date to be screened again. An interesting question is, why didn't more of the 6,668 people seek additional screening? During the ATSDR screening in 2000-2001, the chest radiographs were read by at least two "B-Readers." For the MASSA program during 2003-2007 only one B-reader, at the National Jewish Medical and Research Center in Denver, read the radiographs.

To date, the chest radiographs of about 15% of those screened have had findings "consistent with pneumoconiosis", a disease of the lungs. Dr. Helgerson referred to the findings as "pleural findings". He stated that "pleural" refers to the outside covering of the lung, whereas "interstitial" refers to the inside of the lung. He emphasized that the findings are not a diagnosis of disease, but lead to a referral for a diagnosis. The 15% rate is notably higher than would be found in the general U.S. population based on a national study. Workers involved with mining or processing of vermiculite in Libby had the highest number of pleural findings, followed by family members of the workers, and then by Libby residents. In assessing these findings, one should think about the age and sex of people screened and of the persons with findings. The average age of people with findings from 2000-2007 was between 60 and 70. A reasonable next step would be to determine how many of the referrals resulted in a diagnosis of asbestos-related disease.

Audience Member Question - Would you speak to the younger folks who were screened? Answer - Through 2007, about 650-700 screened people were in the 20 - 40 age range. Of these, about 1% had pleural findings, the same rate found in this age group in population of the nation as a whole. One may also ask about what happens to people in this age group as they get older. The national study suggests that about 3-4% of the population would experience findings as they continued to age.

Audience Member Question - Would disease progress faster for people from 40 to 60 years of age? Answer - I cannot say from the screening data which do not determine diagnosis and disease. To draw conclusions about the progress of disease, one would have to devote both time and attention to a study of the actual diagnoses.

CAG Member Question - What about the people who were not workers or family of workers? Answer - Answer - The proportion of pleural findings of people in this category was about 15%. Workers had a finding rate of about 50% and family members about 20%. A smaller percentage had findings of interstitial disease. It is also interesting that the break down for pleural findings of the non-worker, non-family group was about 50% men and 50% women. Based on the national study, one would expect about twice as many men with findings as women. For the interstitial findings, the sex-ratio was about two-thirds to three quarters men.

CAG Member Question - In the national setting, isn't it correct that men would have higher finding rates because of occupational exposures? Could it be that in Libby the 50-50 gender percentage resulted from the general exposure of people living here?

Answer - I cannot be sure from the screening data.

CAG Member Question - Can you breakdown the data by year?

Answer - Answer - In 2000, the percentage of persons screened who had pleural findings was about 14%. In the first year of the MASSA screening, 2003, the percentage was 26%. By 2007, the percentage was 18%. To the extent findings would suggest that the prevalence of disease was increasing, one might expect the rate of findings to have increased from 2003 to 2007. There are several possible explanations for this result, including the switch from three to one "B-reader", and age effects.

CAG Member Question - Did not ATSDR publish a rate of 18% for 2000? Answer - Yes, in a 2003 publication. The reason for the different estimate in that publication compared to the data reported at this CAG meeting is explained on p.4 of the handout (See Appendix 3).

Comment by Paul Peronard - The numbers of plural and interstitial findings should be added together. Almost everyone with interstitial findings had plural findings, but not visa versa. EPA is paying to assemble a data base. I hope that the state will participate in this effort so that we can meld the MASSA data.

Response With regard to the pleural and interstitial findings see p. 4 of the handout (Appendix 3). We need to look at the subset of people with findings and see what diagnoses resulted from the medical work-ups following referral from MASSA.

CAG Member Question - What about looking at the subset of people who moved here after 1990? Answer - People who moved here after 1990 do not qualify for the current screening program and are therefore not in our data base.

CAG Member Question - Wouldn't looking at this subset be important for the community's economic vitality?

Answer - A separate screening program for this group would be required.

Comment by Paul Peronard - Post-1990 data is going into the CARD data base. Also, data for people who were younger than 18 years old when the screening began will be included. Because of their age, chest radiographs were not taken of members of this group during the screening.

Audience Member Comment - People excluded from screening are eligible for the Libby Asbestos Medical Plan.

CAG Member Question - What was the annual percentage of people with plural findings from the MASSA screening?

Answer - The rate of pleural findings by year was a follows See p. 5 of the handout (Appendix 3):

2003 - 26.1%

2004 - 23.6%

2005 - 17.7%

2006 - 18.1%

2007 - 19.8%.

CAG Member Question - The rates in 2005 to 2007 appear similar; is attrition factored into them? Answer - The data relate only to the number of people screened and cannot be extrapolated to the population of Libby as a whole.

CAG Member Question - Could we please have a copy of the report that you are quoting? Answer - We will email it to Mr. Mueller so it can be included with the meeting summary.

Audience Member Question - Are you updating the 2005 mesothelioma study? Answer - No. I am, however, tracking tumor registry data, and the numbers are small.

CAG Member Comment - The average age of people screened is not necessarily the average age of people when they get the disease.

Answer - You are correct, but the screening data do not provide disease information in any event.

Audience Member Question - Does medical privacy requirements prevent you from tracking individuals who participated in the screening?

Answer - No. Because I am the State Medical Officer, I can see individual records including identifications. I cannot make the identifications public.

Audience Member Question - You mentioned that everyone screened has not sought rescreening. Isn't it possible that those who had questionable results repeated screening?

Answer - Yes.

# **Settlement Agreement Comment Letter**

Philip Erquiaga introduced the letter which is included below in Appendix 4. He explained that the Technical Advisory Group facilitated 2 meetings over the last month to allow the community to consider a response to the US Department of Justice (DOJ) settlement with WR Grace in the bankruptcy case concerning payment of cleanup costs. The letter addresses three issues and asks the bankruptcy court to "consider and acknowledge" the affects of the asbestos contamination on the community and the community's economic conditions. Mr. Erquiaga asked the CAG to consider endorsing and signing the letter.

CAG Member Question - How many signatures have been collected on the letter to date? Answer - A close estimate would be 500-600 signatures.

CAG Member Comment - I have two concerns about the letter as it is presently drafted. First, on page 2, it says, "...given that one-third of the local population has been inflected with Asbestos Related Disease..." This is an overstatement of the number of people with the disease. An accurate statement would be "...given that one-third of the initial ATSDR screening population has been inflicted..." Second, in listing the three issues, the letter states that the "...community requires..." This implies that if the issues are not addressed in the settlement as stated in the letter, that the community would oppose it and it should be rejected. Should the court reject the present settlement, it is not clear when or if there would be another. I would rather write in the letter that "...the community requests..." With these changes, I can sign the letter.

Audience Member Question - Has the city council addressed this letter?

Answer - The city and the county have discussed sending a separate combined letter.

Audience Member Question - How did DOJ arrive at the \$250 million figure?

Answer by Matt Cohn - The figure resulted from a two-year negotiation. It was based on the amount of money that had been expended on the Libby cleanup as of December 31, 2005, and how much was expected to be expended after that date to complete it. We attempted to assess the risks if the \$250 million amount was not accepted. We could accept that amount now or proceed another estimated three years through the bankruptcy process. We looked at the risks associated with parts of the case not being litigated, including the possible position of the other creditors in the WR Grace bankruptcy. After attempting to balance the risks against accepting the \$250 million now, we opted to settle at this amount.

Audience Member Question - What was the amount of money that WR Grace initially offered to pay in the negotiations?

Answer by Matt Cohn - I am not at liberty to say.

CAG Member Question - What was the amount of EPA's original claim? Answer by Matt Cohn - \$54 million.

CAG Member Question - In the past, Paul Peronard has said that he estimates the total cleanup bill to be \$374-375 million. Was that the starting point for the DOJ in the negotiations? Answer by Paul Peronard - Yes.

Audience Member Question - So how much money was left on the table? Answer by Paul Peronard - I do not agree with your characterization of "money left on the table." We started at the \$374 million and negotiated an agreement with WR Grace for \$250 million.

Audience Member Question - Would DOJ have been more successful if a risk assessment had been completed?

Answer by Matt Cohn - No.

CAG Member Question - Would you clarify the relationship between the \$250 million and future cleanup costs?

Answer by Matt Cohn - In the language of the Superfund Program, both past and future costs are referred to as "reimbursement", which causes confusion. For this settlement, all of the \$250 million would be placed in special interest bearing accounts to pay for future cleanup and operation and maintenance costs. If funds remain in these accounts after the cleanups are completed, then the money might go to cleanups at other sites. Without this provision, if all funds are not expended in Libby, then they would sit, unusable in the special accounts.

Audience Member Question - Is the definition of future response costs, all costs incurred after December 31, 2005? Will the \$168 million already expended on cleanup costs come out of the \$250 million?

Answer by Matt Cohn - All of the \$250 million will be used for future costs. If funds remain

after all future costs are met, then the remaining amount will be used to cover the \$168 million.

Audience Member Question - Will the interest on the \$250 million be used for future cleanup costs? Answer by Matt Cohn - Yes.

CAG Member Question - If according to the Record of Decision (ROD), the \$250 million plus interest is not sufficient to pay for the cleanup costs, who would be responsible under the settlement for paying them?

Answer by Matt Cohn - I assume that under the conditions you pose, EPA would continue to fund the cleanup.

Audience Member Question - Paul Peronard previously told CAG that he could effectively spend \$38-49 million per year for the cleanup. Will this settlement provide the money Paul needs? Answer by Paul Peronard - I previously told CAG that I could effectively spend \$38 million to address projects for this year. We have always had more projects than money to pay for them. I have charged the EPA team to look at the property list and estimate cleanup costs so that we can develop a five year plan that would produce the greatest value from the settlement funds. We could attempt to spend as much money as rapidly as possible, but given that the funds will be in interest bearing accounts, do so may not maximize the cleanup value. Carefully sequencing the projects may result in greater value.

Audience Member Comment - I do not believe that the residential cleanups have been adequately funded. The exposure to asbestos continues. We need to reduce this exposure as rapidly as possible. If the settlement money runs out, then EPA should provide more funds.

Answer by Paul Peronard - That will happen, but we will conduct the cleanups as wisely as we can.

Comment by Matt Cohn - I have heard concerns that the \$11 million to be set aside in a separate account to pay for operation and maintenance will not be enough. It is correct that the state is responsible to pay for operation and maintenance after the cleanup is completed. However, we estimate that the operation and maintenance costs will be \$1 million per year for 30 years. We calculate the present value of \$1 million per year for 30 years in 2019 to be \$10 million. In other words, if we have \$11 million in an interest bearing account now and begin withdrawing it to pay for operation and maintenance in 2019, we will have sufficient funds to pay \$1 million per year for 30 years. Also, if we see that more money is needed for operation and maintenance, we can move more of the remaining settlement amount (\$239 million) into the operation and maintenance account.

Comment by Paul Peronard - The costs of the investigation and cleanup of the mine are not part of the \$250 million settlement. They will be negotiated separately with WR Grace, which remains responsible to pay them. Under federal law, the mine related costs are not dischargeable in the bankruptcy proceeding.

Audience Member Question - Has an agreement been reached with WR Grace to pay the mine investigation costs?

Answer by Paul Peronard - These costs are currently being negotiated with WR Grace and will be subject to separate settlement agreement.

Audience Member Question - Will you please clarify whether asbestos is technically an air pollutant or a hazardous substance?

Answer by Matt Cohn - I will try to answer this question as a Superfund attorney. Hazardous substances are listed in 302.4 CFR. This list originated with the Clean Air and Clean Water Acts. I believe that asbestos is listed through the Clean Air Act as a hazardous air pollutant.

Audience Member Comment - I ask this question because home owner insurance policies have an exclusion for air pollution damage, but not for toxic substances.

Response by Matt Cohn - Insurance is governed by different laws. I believe that under case law, air pollutants and toxic substance designations are not mutually exclusive.

Audience Member Question - What happens to the existing letter signed by people from Libby if CAG signs a different one?

Answer by Matt Cohn - A decision by CAG to send a separate letter would have no impact on the other letter that people have signed. EPA would be required to respond to both letters.

CAG Action - All members present agreed to sign the letter regarding the settlement if two changes are made to it: (1) The one-third of the local population afflicted with Asbestos Related Disease is changed to one-third of the initial ATSDR screening population; and (2)"the community requires is changed to the community requests. Bill Patten will make the changes and have a letter for CAG member signatures at the front desk of St. John's Lutheran Hospital.

#### **State Report**

Catherine LeCours reported on behalf of DEQ. DEQ will convene a meeting at the Senior Center in Troy at 7:00 p.m. on Tuesday, April 29, 2008. The meeting will discuss the results of the state's investigation of asbestos contamination of residences in Troy.

# **Operation and Maintenance Working Group Report**

Catherine LeCours reported on behalf of the Working Group. The group is considering draft best management practices for Operable Unit 1, the site of ground water contamination at the former Stimson Lumber and Plywood Mill, and the transition of the Environmental Response program from EPA to the community.

# **EPA Report**

Paul Peronard, Mike Cirian and Ted Linnert reported on behalf of EPA on the following topics.

<u>Cleanup Work</u> - Cleanup work has resumed. This season EPA will be cleaning two Motels, the Sandman and Evergreen.

<u>Construction Contract Awards</u> - Contracts were recently awarded to three firms, ER, ASW and Hudspeth.

Creek Cleanups - Duc Nguyen will be managing the cleanup of the creeks.

<u>Public Meeting</u> - EPA will convene a public meeting on May 22, 2008 at which all of the Libby operable unit managers will report on their projects. The place of the meeting has not yet been set.

# **TAG Report**

Mike Noble reported on behalf of TAG. Dr. Gerry Henningson recently had emergency back surgery, so TAG will be without a Technical Advisor for a while.

# **CARD Report**

Mike Giesey reported that Dr. Rebecca Cline, with the Karmanos Cancer Institute, has completed the Voices of Libby survey. She will probably return to Libby to share its results next spring. CARD continues to work on compilation of the data base for EPA.

#### **Public Comment**

CAG Member Comment - We have received a response to the CAG's letter to EPA Secretary Johnson concerning the declaration of a public health emergency. I ask that we put the response on the next CAG meeting agenda.

Response by Gerald Mueller - I will do so.

#### **Next Meeting**

The next regular CAG meeting is scheduled for 7:00 to 9:00 p.m. on May 8, 2008 in the Ponderosa Room of Libby City Hall.

# Appendix 1 CAG Member & Guest Attendance List April 10, 2008

Members Group/Organization Represented

David F. Latham *The Montanian* KW Maki Libby Schools

Bill Patten St. John's Lutheran Hospital

Philip Erquiaga Eagles Voice.com DC Orr Libby Community Trent Oelberg Libby Main Street

Rita Windom Lincoln County Commission

Ken Hays Senior Citizens

Ted Linnert Environmental Protection Agency (EPA)

Paul Peronard EPA

Catherine LeCours Montana Department of Environmental Quality

Dr. Brad Black Lincoln County Health Officer LeRoy Thom Technical Advisory Group (TAG)

Mike Cirian EPA

Eileen Carney Montana State Board of Respiratory Therapists
Mike Giesey Center for Asbestos Related Disease (CARD)

Guests

Matt Cohn EPA Region 8 Attorney

Joan Miles Director, Montana Department of Health and Human Services (DPHHS)

Jane Smilie Administrator, Public Health and Safety Division, DPHHS

Dr. Steven Helgerson State Medical Officer

#### Appendix 2

# Scott B. Spencer

Attorney-at-Law

May 30, 2001

Paul Peronard Environmental Protection Agency 501 Mineral Ave. Libby, MT 59923

Re: W. R. Grace Settlement

Dear Paul:

I am writing on behalf of the city of Libby on the issue of resolving the clean up and restoration work on the former WR Grace property. The city of Libby is willing to resolve the matter on the terms and conditions that will be set forth in this letter. I hope that this letter will set forth the basis upon which the city of Libby bases its requests.

The first issue is by way of background. This property has on it five buildings that were usable prior to the issue of asbestos clean-up arising, although these buildings were not in very good condition. Some of the buildings were used by Mr. Burnett, and some of the buildings had been used by other tenants. There is a small water line that extends to the building sites. This water line is not adequate for current fire codes.

WR Grace attempted to clean the buildings. The buildings are now in worse condition than they were in previous to the cleaning. The buildings do not meet building or fire code, and wilt not he approved for use until they are brought up to code. It is unlikely that some of the buildings could be restored to a useable condition.

The more important fact is that the cleaning was not successful. There continues to be asbestos contamination in the buildings. The city of Libby has no faith that the buildings can be cleaned. The city of Libby is also told that dust and other contamination comes up from under at least one building while it is being used. The overall pervasiveness of the asbestos contamination makes the city of Libby believe that only a total removal of any potential source of contamination will guarantee the safety of the public and any users or occupants of the property. The history of asbestos and vermiculite contamination continuing to turn up in the Libby area certainly leads the

402 Mineral Ave., P.O. Box 1427, Libby, Mt 59923 (406) 293-3764 , Fax (406) 293-5911

Paul Peronard Page 2 May 30, 2001

city of Libby to believes that total removal of sources of contamination is the only realistic and long term solution to the problem. The only method of guaranteeing that all contamination is removed is to remove the buildings, the foundations, and anything that might contain contamination

The next issue is the restoration of the buildings and the return of the Burnetts to the property. The city had five buildings in a usable condition. Now the city of Libby will have no buildings. Even if the buildings were not removed, the buildings would have to upgraded to bring them into compliance with fire and building codes. Fire codes will require an adequate water line to the property. This water line will have to run under he Burlington Northern Sante Fee tracks. The city of Libby will need a number of buildings to house Mr. Burnett's business. It is the city of Libby's understanding that WR Grace is obligated to restore the property so that Mr. Burnett can return to the property.

Enclosed is a drawing showing the location of the five buildings that have to be removed. The city of Libby recognizes that it might be getting a "bonus" if all five buildings are replaced as well as having a water line installed. Four replacement buildings and a 10" water line would be sufficient to meet the Burnetts needs and to meet fire code. It is my understanding that at one time WR Grace was proceeding to resolve this matter on this approximate basis, and that WR Grace had in fact obtained a permit for the railroad to put a new water line under the tracks. The city of Libby would he willing to forego the replacement of the fifth building in return for the construction of the water line.

Please review this proposal and let me know whether or not this proposal would be acceptable under the Comprehensive Environmental Response, Compensation and Liability Act. I look forward to hearing from you so that the city of Libby can proceed further with getting this matter resolved.

Sincerely yours,

Scott B. Spencer
Attorney at Law

SBS/sms

Enclosure

C:\Files\City-Misc\grace settlement letter.wpd

# **Appendix 3** See pdf HHS-HLNFAX2\_0804182040370207.

#### Appendix 4

April 11, 2008

Ronald J. Tenpas, Assistant Attorney General Environmental Enforcement Section Environment and Natural Resources Division U.S. Department of Justice (DJ # 90-11-2-07106/2) P.O. Box 7611 Washington, D.C. 20044-7611

The Communities of Libby, Troy, and Lincoln County, Montana c/o Phillip Erquiaga 408 W. Flower Street Libby, Montana 59923

In Re: W.R. Grace & Co., Case No. 01-01139 (JFK) D.J. Ref. No. 90-11-2-07106/5

The communities of the Libby Superfund Site in Montana will support the \$250 million proposed Settlement Agreement between W.R. Grace & Co., et al., (Debtors) and the United States Department of Justice, on behalf of the Environmental Protection Agency (Plaintiff), providing the agreement is contingent upon certain assurances, to the communities of Libby, Troy, and Lincoln County, Montana, are in place.

The issues of concern to the community are as follows:

- 1.) The community requires the funds *and interest* be used exclusively for the Libby Superfund site and be used exclusively for *future* costs beginning on the date of execution of the Settlement Agreement, not December 31, 2005 as delineated in the proposed Settlement Agreement dated March 11, 2008.
- 2.) The long-term continuing progress of the Libby Project is contingent on support of a reliable Risk Assessment that meets the established schedule for completing said Risk Assessment. Therefore the community requires assurances that Settlement Funds will be used towards completing a conclusive and reliable Risk Assessment.
- 3.) It is the Environmental Protection Agency's position to leave material containing Libby Amphibole within properties. Given that, to date, no Operations and Maintenance criteria has been established, and that the majority of the properties containing so called *encapsulated* asbestos, are privately held residential properties, the community has grave concern whether \$11 million, as set out in the proposed Settlement Agreement, will be adequate for future Operations and Maintenance costs. The community requires that Operations and Maintenance criteria begin to be established and requires that adequate funding be available for Operations and Maintenance.

The community also requests the court consider and acknowledge that the community faces catastrophic costs associated with Asbestos Related Disease, given that one-third of the local population has been inflected with Asbestos Related Disease as a result of gross negligence by W.R. Grace & Co. Therefore, the community requests the court to acknowledge that W.R. Grace & Co. is fully responsible for the medical costs associated with Asbestos Related Disease in and around Libby, Montana.

The community requests the court to consider and acknowledge the fact that Libby and the surrounding communities are among the most economically depressed and lowest mean income areas in Montana, and also boost one of the highest unemployment rates in the state. Therefore, the community requests the court to acknowledge that W.R. Grace & Co. is a substantial contributing party of responsibility for the failure of the local economy, and is a substantial contributing party of responsibility for the socio-economic suffering associated with the stigma of being a Superfund site.

Sincerely,

The undersigned Community Members of Libby, Troy, and Lincoln County, Montana

Name (Printed)	Signature	Date	Address	
1.) Phone:	email:			
2.)				
Phone:	email:			
3.)Phone:	email:			
4.)Phone:	email:			
5.)Phone:	email:			
6.) Phone:	email:			
7.)Phone:	email:			
8.) Phone:	 email:			